"Cato"

on Constitutional "Money"

"CATO"

ON

CONSTITUTIONAL "MONEY"

AND

LEGAL TENDER.

IN TWELVE NUMBERS

FROM THE CHARLESTON MERCURY.

CHARLESTON:
STEAM-POWER PRESSES OF EVANS & COGSWELL,
3 Broad and 103 East Bay streets.
1862.

SCAN THE EVIL OMENS.

Obsta principiis.

No. I.

To the Editor of the Mercury: If the Constitution of the Confederate States is to be preserved, and is deemed worth preserving, it is time for all who so resolve, and who so think, to examine the omens that forbode mischief, and oppose, in their incipiency, the insidious or heedless devices that will sap and undermine all limitations of Confederate power, unless they be crushed *in embryo*.

Some time last spring, the editor of a Savannah paper, referring to the measure adopted by the Congress at Washington, to make the Treasury notes issued there a legal tender in the payment of debts, observed (in substance) that he presumed such a measure was not a violation of the Constitution of the United States, because the prohibition to make anything but gold and silver current coin a legal tender was on a State, not on Congress. Soon after a member of Congress from Louisiana (Dupré, I think it was) proposed such a measure respecting our Treasury notes, in the shape of a resolution of inquiry, referred to a committee. Upon the first intimation of this scheme from Savannah, I wrote a communication in condemnation of it for a Richmond paper, which never saw the light. I was apprised the like conceit had, last winter, entered the head of a prominent person in Mississippi, and that there was reason to believe it was not wholly without support in South Carolina. Early in the present session of Congress (I quote from the newspaper reporters of Richmond), "Mr. Gartrell, of Georgia, offered a bill making Treasury notes a legal tender in payment of debts. He desired prompt action, and moved that the bill be made the

special order for Tuesday of next week. Mr. Curry, of Alabama, said the business of the House had been greatly impeded, at its last session, by the numerous special orders. He hoped we would avoid the evil now. Mr. Gartrell modified his motion so as to refer the bill to the Committee on the Judiciary. Mr. Curry assented, and hoped for an early report, for he, too, desired prompt decision, and also a prompt rejection of the bill. Mr. Foote, of Tennessee, joined in a desire for a prompt report, but hoped that it would be favorable to the bill."

Recently the following is reported as occurring in the House: "By Mr. Swan: a memorial asking that Confederate notes be made a legal tender. By Mr. Baldwin: a petition upon the same subject, signed by a large number of the citizens of Rockingham."

The Richmond *Enquirer*, of August 26, contained a communication, provoking no comment editorially, in which it is said: "We never can get along right until Confederate currency be made a *legal tender*. All the debts of the country call for *dollars* or *coin;* and how can debtors live through this great struggle for our independence, unless they can pay their *old debts* with Confederate notes or bonds? The regulations *make me* and all others take it for everything sold, and why not make all take it for their *old dues?* The sinews of war must be sustained. No man should be suffered to refuse it on any grounds. Nearly all East Tennessee is polluted with tories, and, of course, the major part of the debts here are due tories, and will our Government longer let them refuse Confederate currency for their *old dollars and coin debts?* If it should, it gives them six per cent. advantage over the debtors, whose money lies on hand, while he pays a tory six per cent. on what he owes. CONSTITUTIONAL OR NOT, make that money a legal tender during the war and you will see the rich fruits of it."

The Richmond *Whig*, of late date, whose motto is, "The Constitution—States Rights"—declares, editorially, as follows: "Whether Constitutional or not, the issues of the Confederate government must be made a legal tender."

In the last number of that paper which I have seen (September 4), a correspondent, unrebuked, elaborates the doctrine, on the authority of Worcester's Dictionary, that to *coin money*, and

regulate the value thereof, is not only to stamp and regulate the value and give currency to metals, domestic and foreign, but embraces also a paper currency, promises to pay, even notes of hand, etc. These citations will show that mischief is brewing in and out of our Congress, and how loose and reckless are the propositions made from sundry quarters, and that I am not making false clamor.

CATO.

No. II.

It is to me surprising and humiliating, that, at so early a day after our Confederate Constitution was ushered into being, an argument should be needed, by a member of Congress especially, to show that the Confederate government, or any department of it, has no power to make anything a legal tender, in payment of debts, except gold and silver current coin. But it seems manifest, from what has already appeared, that the poison of the fatal teachings of Alexander Hamilton and the old Federal party, of Henry Clay and the Whig party, and of that Consolidation party which undermined and destroyed the Constitution of the United States and the Union it constructed, has even thus early begun to corrupt the blood of our body politic.

Let us then look at the language of our Constitution. Here it is:

"The Congress shall have power—to coin money, regulate the value thereof and of foreign coin, and fix the standard of weights and measures.

"To provide for the punishment of counterfeiting the securities and current coin of the Confederate States.

"To borrow money on the credit of the Confederate States.

"To raise and support armies; but no appropriations of money to that use shall be for a longer term than two years.

"No money shall be drawn from the Treasury, but in consequence of appropriations made by law," etc.

"Congress shall appropriate no money from the Treasury except by a vote of two-thirds of both Houses," etc.

"All bills appropriating money shall specify in Federal cur-

rency the exact amount of each appropriation, and the purposes for which it shall be made," etc.

Lastly: "No State shall coin money; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, or *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility."

These are several of the connections in which our Constitution uses the word "money."

I affirm that, from neither of the foregoing provisions, nor from all combined, can the power claimed be derived.

What was the object in enabling Congress to coin *money* and to regulate the value thereof and of foreign coin, and in restraining a State from coining money and from making anything but *gold and silver* current coin a legal tender in payment of debts? It was a necessary complement to that other power granted to Congress—to regulate commerce with foreign nations, among the several States, and with the Indian tribes. No such regulation of commerce could be of any avail for good, if there were not a *standard of value* such as should protect the rights of creditors and ascertain the obligation of debtors with such certainty and permanency as should establish justice, circumvent fraud, and supersede endless and ruinous disputes.

For such end the recognized standard of the commercial world was, and is, and ever will be, alone adequate—*i. e.*, gold and silver. That standard alone, coined and regulated in value by authority of Congress, was the "money" in contemplation; that *money*, and only that, could any State make a legal tender in payment of debts; that *money*, and only that, could be made the solvent of debts and the measure of commercial values between foreign traders or those of different States, among themselves, so as to secure justice, concord, and profitable traffic. Such measure and standard of commercial values was alone recognized by the commercial nations of the earth the most convenient, the most enduring, capable of the most exactness, and the most consecrated by its antiquity. Surely was there abundant reason to lead those who concocted, and those who ratified, the provisions of the Constitution of the United States, respecting this subject, to set up the standard of gold and silver, current coin, as the measure of value; for, were they not thoroughly educated in this behalf, by a knowl-

edge of what resulted, in confusion, injustice, desolation, angry collisions, from the Continental "*money*," and the jarring, discordant, unfaithful, and mischievous legislation of numerous independent sovereignties, touching debts, contracts, currency, and standards of value?

CATO.

No. III.

If gold and silver current coin was thus imperiously demanded for the great ends of international and interstate commerce, and the judicious and proper regulation thereof, why should a Confederate any more than a State government be permitted to thwart the great end and aim of a constitutional stipulation, and introduce a scene not only of confusion worse confounded, in the relations of individuals and communities, in transactions of the gravest importance, and as closely connected with public as private prosperity, but to subvert the carefully constructed foundation of good morals, plain justice, stipulated and covenanted right in contracts, between man and man, people and people?

The Confederate Congress has the exclusive power to "coin money and regulate the value thereof and of foreign coin." That is a power wholly distinct from the power to make that coin a legal tender, or to make anything whatever a legal tender. It was a power pertaining to the reserved rights of the States to declare what should be a legal tender. The very restriction upon a State, confining its power in that respect to gold and silver current coin, shows this by conclusive inference; and the restriction was, and is, proper and necessary, and naturally followed the provision granting to Congress the exclusive right to coin the specified metals, fix their value, and declare what domestic or foreign coin should be current. The one government should coin gold and silver, or adopt that coined by another government, fix the value thereof, and the other should make that alone a legal tender. Thus the function prescribed to each government was explicitly defined. Every coin made and issued by the United States government was not,

ipso facto, a legal tender; for example, copper cents, offered in satisfaction of a stipulation to pay dollars. It is not Congress, but the Constitution, that puts on a State the prohibition as to what it shall declare a legal tender; and will any man in the Confederate Congress, or out of it, be listened to, with patience and respect, who teaches that what is prohibited to a State, and not prohibited to Congress, by express terms, is, therefore, granted to Congress?

The writer for the Richmond *Whig*, herein before referred to, who proposes further to elaborate his ideas, borrows certain definitions of "money" and of "coin" from John Taylor, Jun., and from Worcester's Dictionary. From the first, as follows: Money is "a token of a certain nominal amount, issued by government in return for value received, and payable at the Exchequer for taxes." From Worcester: "Money, originally stamped *coin*, is now applied to whatever serves as a circulating medium; including bank notes and drafts, as well as metallic coins." "Cash is ready money, and is sometimes restricted to *coin* or *metallic* money bearing a legal stamp, but it is commonly used to include bank notes, drafts," etc. The same writer summons Worcester to help out his argument by conforming the word "coin" to the necessities of his logic, and gets what follows: "Coin, that with which payment is made." "To coin, or to convert into money; to fashion or form by stamping." Thereupon he concludes, and inculcates the doctrine, that whatever Congress "*stamps*" for money is MONEY, is the same as "coined" money, and being declared current, is properly to be also declared a legal tender in payment of debts. It is plain, that a State can't make anything but "gold and silver current coin" such tender, for it is expressly restricted to those metals, coined by the Confederate government, and those coined by foreign governments, made current and regulated in value by the Congress. Here, then, we have the remarkable result that a State can have alone one legal tender, one specified standard of value, and the Confederate government may declare a totally different thing such. So there may be, in the same country, two different standards of commercial value, wholly unequal to each other—the one capable of sustaining foreign trade, and the other not. Was not the object of the constitution to have a *standard*, one *fixed standard*, to measure all commercial values,

in all traffic, foreign and domestic? Was not that the necessity? If so (and who can doubt it), the scheme of the writer alluded to, and those who concur with him, in and out of Congress, is unfounded, unconstitutional, wild, and visionary. That it is also disastrously mischievous, subversive of justice and moral obligation and duty, is a legitimate inference, and will be hereafter shown.

If Worcester is to be our constitution, *quoad hoc*, or the authorized interpreter of it, then truly is he the patron saint of a needy and unscrupulous government. If he teaches that the government "stamp" upon anything as money, with a regulation of its value and a declaration of its currency, thereby makes that thing *coined money*, "current money," then may the government so treat any other thing it pleases as money, if it can be *stamped;* for, by the argument, the Confederate government is confined to no one thing among the vast number capable of being *stamped*, of being regulated in value, and of being declared current money. Hence, if the government at Richmond abound in mules, or iron, or calico, *et id omne genus*, it may *stamp* either or all, regulate the value as money, declare such money current, and thus it has executed its function "to coin money and regulate the value thereof." I do not wish to pervert or misrepresent the argument I combat, but I verily believe, and it is submitted to the reader, that I have only exposed its legitimate consequences.

The fallacy springs, and the *reductio ad absurdum* follows, from the false premise assumed, to wit: that Congress has anything to do respecting a legal tender in payment of debts; in forgetting that the matter pertained to the reserved rights of the States; and in overlooking the fact that the CONSTITUTION settles what shall be *money*, and what shall be, therefore, a legal tender in payment of debts.

I urge, further, that if stamping a promise to pay (a promissory note), regulating the value and declaring the same current money, is to "coin money," etc., that process applied by Congress to any promise to pay, a promissory note of the Bank of England or France, or of any individual, is equally within its competence, and is also "coining money," etc.

CATO.

No. IV.

If a Yankee dictionary deserved to be an arbiter on this question, I, too, might cite, in support of my view, one quite as good as WORCESTER—I mean WEBSTER. He ought, at any rate, to be respectfully listened to by such as repose any trust in dictionaries when a Constitution is under consideration. He says "money and mint are the same word varied. Money, coin—stamped metal, any piece of metal, usually gold, silver, or copper, stamped by public authority and used as the medium of commerce. 2. Bank notes or bills of credit issued by authority, *and exchangeable for coin*, or redeemable, are also *called money;* as such notes, in modern times, represent coin and are used as a substitute for it." Yes, *called* so—in modern times—when they are payable and paid in coin on demand, and when issued by authority—and this because they are deemed to represent coin. But did the Constitution ever mean to call them so? There were few of them in 1789, when the United States Constitution was adopted; and since that time up to the period when *our* Constitution was brought into being, and now, when every bank in the land has suspended specie payments, and so continues, did the Constitution mean to call such currency money; could it do so without a flagrant breach of truth; could any man, who means to use language with tolerable propriety, not to say technical accuracy, now "*call*" a bank note or draft "*money*"? It is easy to state how it came to pass that such a currency was "called" money—loosely so called, for it never was money, even when payable and paid on demand in metallic currency—coin. It was so "called" in inexact common parlance, because when in fact redeemed on demand, it was, in current transactions among ourselves, used as money. The States chartered many banks (very unwisely I think), and requiring, on pain of death, their paper currency to be paid in specie, made that currency, so long as it was so redeemed, receivable at their treasuries: but only so long. And how often has it been thus unredeemable and unredeemed, and thus excluded from the State treasuries and condemned as utterly unworthy the title of money? Never was it, in any degree, a substitute for gold and silver coin, or bullion, in foreign commerce: it never can be. Is it

not, then, a reproach to those who concocted and those who ratified the United States or Confederate Constitution, to impute to them the idea that, in their conceptions, money, coin, meant a promise to pay it, by bank, government, or anybody else; a promise so liable to be violated, and as often violated as kept? What a ridiculous standard of value, when this was deemed worthy the sanctity of a constitutional prescription; when it was meant to be a *standard*, a stable, accurate, convenient, intelligible, commonly approved measure of commercial values, in a coveted intercourse with foreign communities, as well as between confederate but distinct, independent sovereignties, and between man and man in the same or different communities! Nothing but gold and silver has a single quality that belongs to such a standard, or that is worthy to be set up as the arbiter of justice, right, and honesty, in the transactions of men who deal in trade, or in contracts that refer to "money" as their subject matter. Why, the very banks, whose promissory notes, we are told, are "called money," and are so meant to be regarded by the Constitution, and would be, if *stamped* by the authority of Congress, and worthy to be declared a legal tender, are drawing their checks upon a depository in so many "dollars," "payable in current funds." Suppose Congress were to undertake, to-day, "to regulate (*i. e.* to fix) the value" of the Confederate Treasury notes, or of bank notes, according to what *standard* would it be fixed? Is there any more accuracy or justice attainable in fixing the value of such a promissory note than in fixing the value of mine or yours? Our Confederate government is to pay, "in dollars," six months after the war is ended and a treaty of peace ratified. Now, when it is said that such a paper is "money," "coin," if the subject admitted an impulse of humor, I might be tempted to borrow the language of Horace, and exclaim: "*Risum teneatis amici*"? To "regulate the value" of a money currency, a thing worthy to become a legal tender in payment of debts, it must be referred to some permanent, accurate, and recognized element; and when "regulated" in value, it must have the attributes of permanency, actual value in the estimation of the world, and a fitness to measure the value of all exchangeable commodities, in traffic, foreign or domestic —as well as other attributes not now necessary to be enumer-

ated. Has a promissory note, even to pay on demand — above all, has a promissory note, such as the Confederacy issues — a single one of such attributes? It is enough to ask the question, there can be but one answer. It is too plain to admit of discussion, that a promise to pay, issued by government, banking corporation, or individual, is liable to constant fluctuation in value, from numerous causes — so many as to defy complete specifications; and, therefore, such a thing being incapable of valuation for a day or an hour in the future, is totally unfit to become the standard of value of anything else, which "money" must be, and gold and silver coin actually is. A vane on a spire would be its counterpart, as to changeableness; but it deserves to be said for the vane, that it answers its purpose, and is, therefore, not deserving of condemnation.

To those who draw inspiration upon this subject from dictionaries, let it be observed that the favorite one (Worcester) is in authority against them, for he interprets "coin" as metals stamped. He says: "Coin or metallic money bearing a legal stamp." Nor will any encouragement be derived by those whose ideas I controvert from Webster's exposition of "*coin.*" But I have done with lexicographers."

CATO.

No. V.

We can draw instruction as to the true meaning of the words "to coin money, regulate the value thereof and of foreign coin," from sources vastly more profound and authoritative than any dictionary, or of all of them combined, and to such sources I resort.

The Committee of Five presented to the Convention at Philadelphia, August 6, 1787, the "Draft of a Constitution." The draft contained the following language, Art. 7, enumerating the powers of Congress, to wit: "To coin money: to regulate the value of foreign coin—to borrow money, *and emit bills on the credit of the United States.*" Art. 13: No State, *without the consent of the Legislature* of the United States, shall emit

bills of credit, or make anything but SPECIE a tender in payment of debts," etc.

Now, observe, according to the "draft" Congress was to be empowered to "coin money" and "emit bills of credit"—*i. e.*, a paper currency, undoubtedly. Were they the same or equivalent things, in the contemplation of the convention? If so, why specify both? That body knew how to use the English language, and were not given to tautology. The States were prohibited to make anything but "*specie*" a legal tender *without the consent of Congress*. The scheme is manifest that proceeded from the brain of the Committee of Five. It was this: Congress alone should issue a paper currency, and the States should be confined, as to a legal tender, to specie, and that alone, unless Congress should "emit bills of credit;" and in that case, the States *might*, had Congress authorized it, not that they *should*, make the Federal "bills of credit" a legal tender. But not even by this scheme, as it came from the committee, was *Congress* empowered to declare what should be a legal tender in payment of debts.

But soon afterward Congress was shorn of the power to make a paper currency, or to allow a State to use such a currency, made by any authority whatever, as a legal tender. To the proof:

"*August* 16.—It was moved and seconded to strike the words '*and emit bills*,' out of the 8th clause of the first section of the 7th article—which passed in the affirmative"—nine states aye—two (New Jersey and Maryland) nay. Thus the clause read (as it now reads in the Constitution of the United States and in our own) "to borrow money on the credit," etc.

Again: the twelfth article of the "draft" provided as follows: "No State shall coin money nor grant letters of marque," etc. In the Convention, August 28, "it was moved and seconded to insert the words 'nor emit bills of credit,' after the word 'money' in the twelfth article—which passed in the affirmative"—yeas, 8; nay, (Virginia) 1; divided, 1 (Maryland). "It was moved and seconded to insert the following clause after the last amendment: 'Nor make anything but gold and silver coin a tender in payment of debts;' which passed unanimously in the affirmative—eleven States being present." It is now established, upon a foundation impregnable, that deliber-

ately, on specific motion, and by ayes and noes, the Convention, overruling its committee, denied to Congress the power to emit "bills of credit," or to authorize the States to make a paper issue a legal tender, but explicitly and rigidly confined the former to the power to "coin money"—that is, to make specie, to render it current, at a regulated value, and the States to that, and that only, as a legal tender.

When the above proceedings are examined in the light of the history of the times, reflected somewhat, as it is, by the debates in the State conventions to which the Constitution was referred, it is safe to say that the people, the Convention at Philadelphia, and the statesmen of those days, almost universally looked *with horror* upon a paper currency, and they had the most abundant reason for the sentiment, as their posterity have had, on sundry occasions since. Rhode Island may constitute a special exception, which State had gained an infamous notoriety by the frauds perpetrated through her paper issues and her legislation to support that currency and the frauds, not to mention other scandalous iniquities.

In our Confederate Constitution there is no prohibition laid upon a State to emit bills of credit; but it is clear such bills cannot be made a legal tender. To my mind, it was always apparent that a bank bill, issued by a bank instituted and owned by a State, and for the redemption of which it was liable, though the transaction was effected by agents with a corporate existence (such, for example, as the bills of the Bank of the State of South Carolina), were "bills of credit," and in conflict with the Constitution of the United States. I am aware, at the same time, that the contrary was held by Baldwin, of the Supreme Court of the United States, upon the sandy foundation that the practical construction of half a century, by State and Federal governments, maintained the doctrine ruled: while, if the question was, *res integra*, the contrary opinion, *i. e.*, my opinion, would be the better one. Yet, no consolation can be derived by my opponents from this, because no matter what a State may be entitled to do, because it may not be forbidden by its constitutional contract, expressly or by just implication, it remains perpetually, universally, and fundamentally true, that *Congress* can do nothing which it is not expressly authorized to do.

CATO.

No. VI.

I shall now appeal to a source of information, that *approaches* the stringent force of *authority* upon the question of the true meaning of the phrase "to coin money." I say *approaches* the force of authority, because I am not willing to attribute the force of absolute authority to the opinions of any man, not vested with competent express power to make an irreversible, binding exposition of any word in a Constitution, to which, by fair and express contract, directly or through my State, I am bound to yield obedience. I cite the observations of Mr. Madison, on the clause of the Constitution in question, expressed *before* its adoption, and in the face of that close and unsparing scrutiny with which its opponents would, and did, visit all his opinions and expositions, in Conventions to be engaged in an examination of that instrument. I have, by no means, the same respect for the opinions of the same man, on the same subject, expressed *after* he became an administrator of the Constitution, or the expounder of it, being under the blandishments which spring from the possession and exercise of power, which, evermore, "grows on what it feeds on," or the disturbing influences of heated party bias, or that siren song, the unfailing lullaby of a purpose to usurp and tyrannize—the plea of public necessity—the inexorable demands of the condition of war.

In the 42d No. Federalist, Mr. Madison says: "All that need be remarked on the power to coin money, regulate the value thereof and of foreign coin, is, that by providing for this last case" (*i. e.* as to foreign coin) "the Constitution has supplied a material omission in the Articles of Confederation. The authority of the existing Congress is restrained to the regulation of coin *struck* by their own authority or that of the respective States. It must be seen at once, that the proposed uniformity in the *value* of the current coin might be destroyed by subjecting that of foreign coin to the different regulations of the different States."

In the 43d number of the same work, from the same pen, is the language following: "The right of coining money, which is here taken from the States, was left in their hands by the Confederation, as a concurrent right with that of Congress,

under an exception in favor of the exclusive right of Congress to regulate the *alloy* and value. In this instance, also, the new provision is an improvement on the old. While the *alloy* and value depended on the general authority, a right of coinage in the particular States could have no other effect than to multiply expensive mints and diversify the forms and *weights* of the circulating *pieces*. The latter inconveniency defeats one purpose for which the power was originally submitted to the Federal head; and as far as the former" (*i. e.*, State mints) "might prevent an inconvenient remittance of *gold* and *silver* to the central mint for recoinage, the end can be as well attained by local mints established under the general authority."

Now, taking this exposition as our guide (and surely it is worthy of all acceptation), who will pretend to say that "coin" — "to coin money" — in the sense of the Constitution, refers to anything, under the heavens, but *metallic* currency? And, I add, of gold and silver only? For that alone could a State make a legal tender, when constituted current coin by the regulation or stamp of the Federal head, and that alone could the Federal head coin, or adopt, with a regulated value, as the constitutional currency; and the exclusive thing fit to be, and constitutionally pronounced to be, a legal tender in payment of debts. Look at the words italicized — "alloy," "weights," "pieces," "gold and silver;" what doubt can there be, that a paper medium, or currency, or standard of value, no matter of what form or from what authority, is as effectually excluded from all idea concerning the act of coining as the skin of a beast or a leaf of tobacco?

Yet, in the face of this reasoning and authority, in contempt of the voice of history that proclaims aloud the meaning of the language in question, and proclaims that gold and silver coin was the "money" which Congress was to provide, and that only, listen to the language of the writer for the Whig: Quoth he, "Who will deny that Congress may *stamp* the Treasury notes, and thus make them money?" It is probable my readers will join me in asking a division of the question; and we shall unite in allowing that Congress may *stamp* Treasury notes, but I surmise we shall equally join in utterly denying that Congress can thereby, or by any other means, make them *money* — *i. e.*,

the money which the Constitution empowered Congress to coin. People may call a variety of devices money, and use them in lieu of money; and dictionaries may reflect this voluntary popular language and conduct; and they may, in special circumstances, and for certain periods, perform the office of money. But, is it a species of logic that can challenge our respect, which seeks to convert a substitute for a *specific thing* into that very thing — that calls the shadow the substance — the representative the constituent—a promise to pay payment? Surely he reads in vain our annals, touching constitutional regulations of money—coining money, establishing a standard of value for commerce and contracts—who does not see, that it was the special, identical, exclusive end of them all, to extinguish and forever eradicate the pretension of a promise to pay money to become itself money; no matter by whom — government, or corporation, or individual — the promise might be issued. The evidence of this truth is scattered broadcast over all the records of all discussions relating to the subject, indulged by those who contrived, and those who adopted, the Constitution of 1787–'9.

CATO.

No. VII.

I flatter myself those who have done me the honor of reading my observations thus far, will require no more of reasoning or authority to produce an undoubting conviction that, under the power to coin money, etc., Congress has no pretence of authority to manufacture and emit any species of paper as money. For, though what I have said, and the quotations I have made of what others have said, applies to the Constitution of the United States, it would seem simply preposterous to contend that the same words and phrases in our Constitution have a meaning any wise different from that they import in Lincoln's (if, indeed, he has any Constitution at all). Certainly the experience as to paper money, so called, which this generation has been able to add to that of ante-revolutionary times and post-revolutionary times up to 1789, has but fortified the incen-

tives leading the men of 1787–'9, and for a stronger reason ought to lead us to abhor a paper currency as a standard of value, or as "*money*" in any sense; nor have *our* lessons, taught by our experience, brought us to esteem the paper promises to pay, emitted by a Federal government, as any fitter to be called money, or to be a tender, in payment of specie lent and promised to be repaid, than such promises emitted by a State, or a bank of issue chartered by it. Nor do I think that Worcester's Dictionary will be clothed with the potent dignity of having instructed the framers or ratifiers of our Constitution, in new and very mischievous views of the definition of *coin, coining, money,* and *legal tender.*

Neither the precise point I am considering—*i. e., whether Congress can make anything but gold and silver current coin a legal tender in payment of debts*—nor the exigency of my argument to vindicate the negative, can make it necessary for me to establish the proposition that Congress cannot emit "bills of credit." The reason is this: It may be granted that Congress may emit "bills of credit," and it may be true, also, that people may choose to make them current, as and for money, so long as people have faith in them and please so to do; and yet, the question will still remain in *statu quo:* Can Congress make them a legal tender? My proposition is distinctly this: That by the Constitutions of the quondam United States and of the Confederate States, no government, State or Federal, can make anything but gold and silver current coin MONEY; that neither government can make anything else a legal tender in payment of debts; no matter whether or not either or both governments may emit "bills of credit."

It may turn out, upon a proper investigation, to which I do not now apply myself, that though the Congress of the United States could not constitutionally issue or "emit" bills of credit, yet that the Confederate Congress can. Of that, hereafter. I am quite convinced that it was an usurpation on the part of the former to issue any such currency, directly or indirectly, as money, or with a view to perform the functions of money. I am quite aware there were various opinions expressed on this subject, both early and late, by men of deservedly prominent consideration. Our own Charles Pinckney took the affirmative in May, 1788. He said, in our convention, then, "if

paper money should become necessary, the general government still possess the power of emitting it; and Continental paper, well funded, must ever answer the purpose better than State paper." A. J. Dallas, while Secretary of the Treasury, in 1815, *assumed* that Congress had the power to emit bills of credit "as a necessary implication from positive provisions" (said he). He had specified, in immediate connection with this observation, only the positive provision to coin money. He admitted that such a power had been exercised only in a qualified and limited manner—referring to bills of the Bank of the United States, and Treasury notes issued during the war of 1812. Such currency was declared receivable alone in payment to the United States. Mr. Crawford, Secretary of the Treasury, in 1820, seemed to have direct reference to the observation of Mr. Dallas when he said: "Coinage, and the regulation of money, have, in all nations, been considered one of the highest acts of sovereignty. It may well be doubted, however, whether a sovereign power over the coinage necessarily gives the right to establish a paper currency. The power to establish such a currency ought not only to be unquestionable, but unquestioned. Any doubt about the legality of the exercise of such an authority could not fail to mar any system that human ingenuity could devise."

Alexander Hamilton, the Coryphæus of the "sappers and miners" of the Constitution of the United States, who was *primus inter pares*, Judge Marshall himself occupying a position in his rear—Hamilton, brilliant in intellect, subtle in expedient, of resolute purpose, zealous and persevering for consolidation, of unblenching courage, never (so far as I have read) *distinctly* affirmed the right of Congress to issue bills of credit: he admonished, earnestly, against such act by Congress, making use of this remarkable language (*vide* "Reports on the Finances," vol. I, p. 64): "The emitting of paper money by the authority of government is wisely prohibited to the individual States, by the National Constitution, and the spirit of that prohibition ought not to be disregarded by the Government of the United States. Though paper emissions, under a general authority, might have some advantages not applicable, and be free from some disadvantages which are applicable to the like emissions by the States separately, yet they are of a

nature so liable to abuse—and it may even be affirmed so certain of being abused—that the wisdom of the government will be shown in never trusting itself with the use of so seducing and dangerous an expedient." He discovered wisdom and safety in using an agency to do indirectly what he abhorred to do directly—*i. e.*, a chartered bank—which was to be based on specie and government stocks, restrained by the limits of sound trade, and the liability to pay specie on demand, or at a fixed day, for its issues. And yet, even Hamilton never dared to suggest, and a Congress of Federalists never dared to exceed, a provision beyond that of making such bills of credit receivable in dues to the Federal government. No wonder Hamilton clothed himself in a crafty ambiguity in alluding to the power to issue bills of credit, or a paper currency (which were equivalent ideas with the men of that day). He knew, what I have before revealed, that the Convention of '87 had expressly refused this power to Congress, by nearly an unanimous vote, on specific motion; and he knew the meaning of that vote, as thus interpreted by Luther Martin, in a responsible, deliberate report to his Legislature: "By our original Articles of Confederation, the Congress have power to borrow money and emit bills of credit on the credit of the United States; agreeably to which was the report on this system as made by the Committee of Detail. When we came to this part of the report, a motion was made to strike out the words 'to emit bills of credit;' against the motion we urged that it would be improper to deprive the Congress of that power; that it would be a novelty unprecedented to establish a government which should not have such authority. That it was impossible to look into futurity so far as to decide that events might not happen that should render the exercise of such a power absolutely necessary; and that we doubted whether, if a war should take place, it would be possible for this country to defend itself without having recourse to paper credit, in which case there would be a necessity to become a *prey* to our *enemies* or violate the Constitution of our government; and that, considering the administration of the government would be principally in the hands of the wealthy, there could be little reason to fear an abuse of the power, or an unnecessary or injurious exercise of it. But, sir, a majority of the Convention,

being wise beyond every event, and being willing to risk any political evil *rather than admit the idea of a paper emission, in any possible case*, refused to trust this authority to a government on which they were lavishing the most unlimited powers of

Without exploring farther this collateral, but not unimportant taxation," etc., "*and they erased that clause from the system.*" subject, how could any man venture to affirm that the Congress of the United States ever had the authority to issue a single bill of paper money? It appears to me no man can so affirm who (having proper information) did not design to *cabbage* for the Federal head what was not its right; what, on grave, serious debate, was explicitly denied; denied expressly for the purpose of extinguishing what was felt universally as a horrible curse, and was so in fact—*paper money!* It is plain now why Hamilton was so tender-footed in treading this ground in 1790, and why he still did not explicitly yield it. He meant to give up nothing that could—when time and its emergencies, when ambiguities, forgetfulness, or ignorance, when party organization and passion, temporary interests, when the citadel had been gradually approached by the "sappers and miners" with that tremendous instrument in mischievous hands, the "necessary and proper" clauses—render it safe to claim what had been denied, as the then living generation knew, but could not proclaim when their voices were hushed. It is then proved that the Congress at Washington could not righteously emit paper money; *a fortiori*, they could not make it a legal tender in payment of debts.

CATO.

No. VIII.

If it should be affirmed that a more plausible argument can be framed in favor of the power of *our* Congress to make and issue "paper money," than ever was or could be in behalf of the Congress of the United States, it is presumed such argument is expected to be drawn from this provision in our Constitution, to wit: "The government established by this Consti-

tution is the successor of the Provisional government of the Confederate States of America, and all the laws passed by the latter shall continue in force until the same shall be repealed or modified;" and from the fact that a law of the Provisional government existed, partly executed and in process of execution, when the existing Constitution took effect, authorizing the issue of Treasury notes, in the similitude of paper money. Several difficulties lie in the way of obtaining any aid from this source. In the first place, only specific laws obtained thereby an efficacy, protracted (at the utmost) only till they were exhausted by their own action or limitation, and liable always to cease to be at the pleasure of Congress. In the second place, the clause quoted delegates no power whatever to Congress, except to terminate or modify such laws when their discretion should prompt the one or the other; and so far as the clause is concerned, not a particle of authority is delegated to imitate the example of the Provisional government, and the Federal government is left still to seek for any power to originate and enact any law in their charter, their power of attorney, as though the clause under consideration had never existed. In the third place, the governments, under both Constitutions, were enjoined to perform the contracts and engagements entered into by their respective predecessors, and the Continental Congress, as well as the separate States, had issued, and they were in circulation, "bills of credit"—paper money; and what is more, various of such issues, by either government, had been declared a legal tender in payment of debts. In the fourth place, the Provisional government never made any of its paper issues such a legal tender, and, therefore, if its legislation respecting them should "continue in force" to the end of time, they could never become such a tender, unless our Congress could find, in some other clause of the Constitution, a power to make them so. This, of course, throws wholly out of consideration the clause above cited in this discussion.

I surmise, that since the advocates of making the Treasury notes a legal tender in payment of debts must be driven from every other position by what I have already said, and by what can be said in addition, they will resort to the provision empowering Congress "to make all laws which shall be *necessary*

and proper" to carry into effect any power specially delegated to the Confederate government, or any department or officer thereof.

Every one, who is likely to consider, with a view to ascertain and follow the truth, the subject I am discussing, knows but too well that this same provision in the Constitution we have abrogated was made by the crafty, the ignorant, the perverted, the ambitious, the corrupt, banded together in a crusade against reserved rights, and against the Constitution of the United States—Pandora's Box, without Hope at the bottom. It was the armory from which they drew the fatal weapons that extinguished the ligaments and vitality of the Union of '89, and introduced those infernal scenes that are now before our eyes. I have no design to enter at large into the unlimited field of dissertation which this topic opens to anybody who pleases to cultivate it; though I shall occupy it to a very restricted degree. But I warn my countrymen that the gigantic war now in full and horrible blast, into which we have been driven by the most accursed race (who have the power and the opportunity to throw off their canting hypocrisy, and indulge their propensity to robbery, desolation, revenge, and slaughter), which has ever afflicted mankind, I repeat, that this gigantic war presents the fittest atmosphere to disseminate those poisons from the same Pandora's Box that have proved so fatal to another Union and another Constitution. Our present circumstances continually present and reinforce that fatal plea of necessity, which has so often been made the panoply of stupendous iniquity, and is calculated to seduce and drug into drowsiness the well-meaning, but too simple and confiding; indeed, they abstract us all, more or less, from the "lesser points of the law"—from the cautious scanning of evil beginnings, which quiet times permit and encourage, and fix us upon the contemplation of that stupendous panorama of campaigns, sieges, and battles daily unwinding before us, exhibiting, as chief spectacles, blood and carnage, devastation and universal wailing, never paralleled; these circumstances enable the "sappers and miners" of the Constitution to work diligently, undisturbed, in the dark, as it were; to sow in a fruitful soil the seeds of irreparable mischief; and the still small voice is unheard amid the din and tumult. In such cir-

cumstances, then, I conjure those who can bend themselves to the duty to scan the evil omens that portend calamity—firmly to resist the entering wedge that otherwise may rive asunder the political fabric so recently contrived.

I am wholly at a loss to conceive the specifically granted power to which that of declaring Treasury notes a legal tender in payment of debts is "a necessary and proper" incident. I have shown (if I have established anything) that it has no connection with the power to "coin money"—nay, that the power to issue paper money at all has no such connection. It is neither necessary nor proper that such notes shall be a legal tender in payment of debts—nay, that they should be issued at all—to carry into effect the power to "borrow money on the credit of the Confederate States." Why, it is too plain to warrant argument, or to admit difference of opinion, that when government or individual exchanges a note promising *to pay money*, the transaction imports the very reverse of *borrowing* money. Such a transaction is meant and operates to procure the commodity desired, without the use of money at all on the occasion—it is its explicit purpose and effect to supersede the borrowing or use of money. This is exemplified by the action of any government which has ever resorted to the expedient of issuing "bills of credit" in the shape of paper money, Treasury notes. Witness the war of 1812, between the United States and Britain, and that which is now flagrant. Different statutes have been passed: one to authorize the borrowing of money; the other the issuing of Treasury notes—operations totally distinct, and so well understood to be by those who performed them. When a government obtains a mule, a wagon, or one hundred bushels of corn, anything it buys for certain promises to pay money at a future time, it is not short of absurdity to say that thereby any *money is paid or borrowed*. What follows? This: that even the issuing and use of a paper currency, being a promise to pay money, has no affinity or relation whatever to the act of "*borrowing* money;" that this resort of government is, therefore, wholly excluded from the category of any powers that may be incident, as necessary and proper, or either, to the principal power, "to borrow money;" and, *a fortiori*, the making such currency a legal tender in payment of debts, it is not within the limits of a sane imagination to connect, by the liga-

ment of a hair, with *incidental* powers, as to borrowing money. Then will we be referred to the power "to declare war—to raise and maintain armies—to provide and maintain a navy"? Without stopping to argue so plain a point, as that Treasury notes have nothing to do with declaring war, I shall assume, for the sake of brevity, that they may be convenient, or, for the sake of argument, "necessary and proper" (I do not mean to admit it) to "maintain" an army and navy; still, I utterly deny that it is necessary and proper to make them a legal tender in payment of debts, in order to carry into effect such powers. Throughout our whole political history as one of the United States, and since we renounced that relation, armies and navies—the former upon a most magnificent scale—have been "raised," "provided," "maintained," without declaring Federal paper money a legal tender in payment of debts, or any pretence to the power to do so, up to a very recent period. The most zealous consolidationist—the bitterest contemner and reviler of the reserved powers—the most ardent admirer of an imperial central power, to be erected on the ruins of States rights—the busiest architects of such a structure, from Alexander Hamilton and his co-workers down to the Lucifers and lesser devils of the dynasty of Abraham Lincoln, none ever ventured upon such arrogant assumption of power. These latter have indeed done so, having totally upset and trampled into shreds their Constitution, having most naturally invaded the sanctity of contracts, toppled over the standard of value, and recklessly introduced into their affairs generally the chaos and confusion of the infernal regions. Is this an example fit to be cited or imitated this side the Susquehanna? Then, if these powers, now under review, have been successfully "carried into effect," and repeatedly so executed, without declaring Treasury notes a legal tender for debts—if (as we all rejoice to know) we ourselves are gloriously executing these powers (so far, at least, as armies are concerned), without giving to Treasury notes the disputed attribute, what more is wanting to complete the demonstration, that to give them such an attribute—the attribute of gold and silver current coin exclusively—is not a "necessary and proper" incident to these powers?

CATO.

No. IX.

Suppose the advocates of the scheme of lifting Treasury notes to the dignity of specie—the currency of the Constitution—should resort to the power to "REGULATE commerce with foreign nations, among the several States and with the Indian tribes," and, for aught I know, it may be the favorite pedestal upon which they may place their hopes. I have to answer: *First:* Treasury notes, whether a legal tender or not, are in no wise "necessary and proper" to the existence of commerce at all, either with foreign nations or among the several States. Indeed, such an instrumentality, so far as it displaces the constitutional currency (and it always does so, more or less, and now totally supplants it), is a hinderance to commerce, and may become a very vampire, that sucks up its life-blood. It never can aid it, and never has aided it. *Second:* To make such currency a legal tender in payment of debts, would embarrass, perhaps destroy, *foreign* commerce. If we are not to discredit the testimony of our ancestors, of the constitutional and revolutionary era, paper money did have that effect between 1783 and 1789; and, indeed, the like effect during that period and before, on the commerce "*among the several States.*" For it must be remembered, that certain issues of paper money by the Continental Congress as well as the several States, or at least various of them, were made a legal tender in payment of debts; and the iniquities of Rhode Island in this field of fraud and public robbery gained for that contemptible State, always a pestilential nuisance, an infamous notoriety, which is published and declared in all the debates on the Constitution of the United States that are extant. *Third:* It would afflict commerce with the very evil which the specie provisions of the Constitution were intended to cure and remove. *Fourth:* If Treasury notes are not only not "necessary and proper," but baneful to commerce itself, much less is such a currency necessary and proper, or even convenient or appropriate, for its REGULATION—because it is one thing to regulate the manner in which commerce shall be conducted, and quite another to prescribe the medium of exchanges which commerce shall adopt. Besides, the *Constitution* prescribes the medium of exchanges, and the "money" that shall effect them, where payment of

debts is to be made, to wit, "gold and silver current coin." *Fifth:* The argument that seeks root in the power to regulate commerce, proves too much—"o'erleaps itself, and falls on t' other side." The power is, "to regulate commerce with foreign nations *among* the several States, and with the Indian tribes." Now, if Treasury notes are prescribed as necessary and proper to the execution of this power, and they must also be made a legal tender to execute it effectually, then we have Congress regulating commerce *within* a State—the *internal* commerce of a State—a bald and unmitigated usurpation; and then, likewise, we should have this extraordinary fruit of the clause granting implied powers, to wit: first implication—Treasury notes as necessary and proper for executing the specific power; second implication—attaching to them a quality to be a legal tender in payment of debts, in order to make the Treasury notes effectual for their purpose, which is mounting an incidental power upon another incidental power, piling Pelion upon Ossa, and then, perhaps, we shall be treated to a bill of pains and penalties if we scruple to admit, and act accordingly, that a promise to pay specie is specie, no matter whether the promissor be government or individual, solvent or bankrupt. Where, upon the basis of such conception, shall be the end of that line of construction, that shall string shadow upon shadow, implication upon implication, until the incidental clause of the Constitution shall become the Aaron's rod of that instrument, as it did become in the Constitution we have abrogated, and gorge itself by swallowing up every other power, and with them the chartered rights of States and citizen?

It appears to me that temerity itself will not resort to any other specific power than one or the other of those I have mentioned as having the slightest pretension to draw in its train, as a necessary and proper incident to its effectual execution, that of making paper money at all; or, if made, of making it a legal tender in payment of debts.

Hear what Mr. Jefferson has said as to the proper rule of constructing the clause delegating the power to use means "necessary and proper." He wrote, in February, 1791, under the gravest official responsibility, at the instance of General Washington, when he was called on to consider the charter of the first bank by the Congress of the United States; and he

wrote on the occasion of the first grand conflict between the consolidationists (the Federalists of that day) and those who vindicated the reserved rights of the States, or of the people. In his model State paper, with the terseness and vigor of style that was peculiarly his, he says: "The Constitution allows only the means which are 'necessary,' not those which are merely 'convenient,' for effecting the enumerated powers. If such a latitude of construction be allowed to this phrase as to give any non-enumerated power, it will go to every one; for there is no one which ingenuity may not torture into a *convenience in some way or other, to some one* of so long a list of enumerated powers. It would swallow up all the delegated powers, and reduce the whole to one phrase. Therefore it was that the Constitution restrained them to the *necessary* means—that is to say, to those means without which the grant of power would be nugatory."

I reproduce these words of sober wisdom from one of the first minds of the revolutionary era, and (I think) of any era, because they are well weighed and well grounded; and I also believe the instruction to be drawn from them was never more needed than it is now, and by no race of *politicians* (*statesmen* are scarce) more than those who now bear sway.

CATO.

No. X.

At a time when a serious and unimpassioned discussion would be heeded, other considerations of a more general nature would be deemed very potent obstacles in the way of those who would engraft the power of Congress to constitute its paper money a legal tender in payment of debts, upon the clause of the Constitution delegating the authority to use auxiliary *means*, "necessary and proper" to carry into effect primary, specified powers. I suggest some of such obstacles.

No primary, substantial, sovereign power, not enumerated as granted in the Constitution, can be *implied*, under the head of a mere *means* to an end. Since, then, it is not competent to

a government to execute an end, it is a necessary result, that it can employ no means, no mere auxiliary measure, tending to attain that end. It will not be denied, that to make or prescribe the money of a people—the standard of values in commerce—the solvent of debts—is a substantive, fundamental, sovereign power. I trust I have made it too manifest for controversy, that Congress can *make* or prescribe no *money*, but gold and silver coin, by virtue of any express, specific grant of power. No lawyer will question the maxim, *expressio unius, exclusio alterius;* where one mode of doing a thing is prescribed to an agent, specifically, every other mode of doing it is excluded. The only mode prescribed to Congress in which it can make "*money,*" is by "coining" it. This has been shown to apply solely to gold and silver, or the "precious metals"—to "SPECIE." The *end* prescribed to Congress is to make *this* money, or adopt what another has made—that is, to make, or adopt, gold and silver current coin. Can any well organized mind, one capable of comprehending logical or legal congruity in argument, and offended at any process of thought that presents disjointed and incongruous discussion, conceive the idea as legitimate—that by *implication* merely from the clause under consideration, Congress can effect an END, a great and sovereign end; can make that money which the Constitution excludes as money?

Again: We shall all agree that the thing which is MONEY will pay a debt, and, of course, must be a legal tender for a debt. Now, the Confederate Constitution does not prohibit a State from issuing "bills of credit," or paper money, and it does not grant that power to Congress. Yet the Constitution does expressly prohibit a State to make anything but *specie* a legal tender in payment of debts (the words are "gold and silver current coin"). Is this not a demonstration that paper money is not the money of the Constitution, and is not the thing a creditor for dollars loaned is obliged to take, or can be made to take, until vaulting tyranny shall trample upon the ashes of the Constitution, and of private rights?

Still farther: If Congress be allowed to *imply* this power (as to a legal tender), it gains, by the political ledgerdemain of construction, the power not merely to "impair," but to violate and extinguish the obligation of contracts! If the people

of these Confederate States meant to invest *any government* with such a power, I, for one, pronounce that they are incapable of self-government; that they know not, and feel not, the elementary maxims of political wisdom, of sound morals, or of plain honesty. They would, thereby, allow a man, who had received, upon loan, or by purchase, a DOLLAR, or a dollar's worth, of his neighbor, or of anybody or corporation, to pay it by something which promised to pay a dollar at some future time, certain or uncertain, or (it may be) on some future contingency; though his *obligation* was, in express terms, to pay, at a time fixed, as many *dollars* as he got; and though (it might be) he had been indulged far beyond the terms of his contract, until causes, for which neither debtor nor creditor could be held responsible, made it difficult for him to produce the dollar. And because it was inconvenient, or involved some sacrifice, perhaps, to keep his contract, why, he must be absolved from it; or, by authority of government, tender a stone when he promised bread. It is plain to any understanding, that when any currency, substituted for *money*, has depreciated from any cause whatever, the man who has anything to sell receives from the purchaser a price enhanced in precise proportion to the depreciation of the currency received—it being assumed that the relation of demand and supply remains the same. If the currency thus received be depreciated fifty per cent. below the standard of specie, the debtor, who so sells his commodity at the enhanced price of fifty per cent., would be enabled to pay a debt he owed for specie borrowed, or for property bought, at the specie standard of value, with *one half* the sum of MONEY that he received from his creditor—if he be allowed to force such a currency upon him. Now such rule of justice, such a precept of morals, the people have absolutely forbidden to be inscribed or inculcated by their several State Legislatures; they have not expressly vested such a monstrous power for mischief in the Confederate Legislature—though they have a commanding voice in the former, and only a factional one in the latter. Can it be believed that, by *implication*, this people conceded to a paper currency, to be issued by the latter, a dignity and efficacy denied to that which was exclusively their own, which is wholly under their control, and which, by *our* Confederate Constitution, each State has an un-

challenged right to issue. Hear what Mr. Madison says in the 44th No. "Federalist":

"Bills of attainder, *ex post facto* laws, and laws impairing the obligation of contracts, are contrary *to the first principles of the social compact, and to every principle of sound legislation.* The two former are expressly prohibited by the declarations prefixed to some of the State Constitutions, and all of them are prohibited by the spirit and scope of these fundamental charters. Our own experience has taught us, nevertheless, that additional fences against these dangers ought not to be omitted. Very properly, therefore, have the Convention added this constitutional bulwark in favor of personal security and private rights; and I am much deceived, if they have not, in so doing, as faithfully consulted the genuine sentiments as the undoubted interests of their constituents. The sober people of America are weary of the fluctuating policy which has diverted the public councils. They have seen with regret, and with indignation, that sudden changes and legislative interferences, in cases affecting personal rights, become jobs in the hands of influential speculators, and snares to the more industrious and less informed part of the community. They have seen, too, that one legislative interference is but the link of a long chain of repetitions; every subsequent interference being naturally produced by the effects of the preceding. They very rightly infer, therefore, that some thorough reform is wanting, which will banish speculation on public measures, inspire a general prudence and industry, and give a regular course to the business of society."

Says Story (referring to the same subject):

"Severe as were the calamities of the war, the pressure of them was far less mischievous than this slow but progressive destruction of all our resources, all our industry, and all our credit."

And shall such a tremendous power as that to violate the obligation of contracts be seized, by the Federal Legislature, by the process of IMPLICATION working such calamities as are above set out, in its fitful but ever unjust spoilation of private covenanted rights? Shall the long and busy finger of the Federal power be introduced into the State courts, and private contracts of A, B, and C, and thus by IMPLICATION of authority

to force a fraud and a falsehood into the plain language of a contract? Is the same poison administered by one doctor any more acceptable than when another does the same office?

CATO.

No. XI.

In one special way (and I do not approve that) the Confederate Congress may interfere with the common law relations of debtor and creditor; and that is, by "passing uniform laws on the subject of bankruptcies." Although I happen to *know* that one of the Confederate judges, now in office, under appointment by the President and confirmation by the Provisional Congress, stoutly insisted that the Congress ought to have the power to pass laws impairing the obligation of contracts, and although I *believe* he would sustain such laws to-day, and although I *fear* there would be many of *all* former party divisions in the valley of the Mississippi, and probably elsewhere, ready to echo such a doctrine, yet I venture to defy them to surmount the obstacles I have already thrown in their way (unless, like the writers and orators who have started my pen, they go for a measure "constitutional or not constitutional"), and I throw in their path the insuperable obstacle which the very clause of the Constitution, above partially quoted, supplies. Read it in full:

"To establish uniform laws on the subject of bankruptcies, throughout the Confederate States, *but no law of Congress shall discharge any debt contracted before the passage of the same.*"

This is enough for any man who does not go for his scheme of the hour, "constitutional or not constitutional."

Now, let us grant, for the moment, that Congress do make the Confederate paper money a legal tender in payment of debts, and that such a mandate be not overthrown by the judiciary (and I believe the President *can* find a judiciary who would *not* overthrow it, but he is not likely to find them on the benches of the States), what then? It is granted that the creditor (mainly those very banks which have yielded their field of circulation to the government, and, therefore, their earnings) is despoiled of

his just debt to an amount in proportion to the depreciation of the currency forced upon him below the standard of that which he lent. But have the great public been benefited? Is the tax-paying wealth of the population increased, or their wealth in any sense? Have "the first principles of the social compact"—"every principle of sound legislation"—escaped a stab? Is the paper currency fixed upon the basis of par value with current coin? By no means. Though Congress shout its legislative mandates until it grows hoarse, the laws of trade and commerce will ever prevail; until by foul and foolish legislation faith, trade, commerce, shall be all extinguished. A volume of laws intended to fence around a paper currency, issued by any government whatever, can give it no value extra-territorially—I mean in foreign transactions. Nor can such a formidable mass of legislation compel or induce the man who has a hog to sell to take the currency for his hog, unless he pleases; and he will not please, unless he places on his hog a price enhanced proportionate to the depreciation of the currency tendered.

Then the only practical effects of such legislation, as the legal tender men advocate, is this: The government degrades itself by perpetrating the grossest injustice between man and man: the debtor, who converts his commodities into the depreciated currency, gains a temporary convenience and advantage to the permanent injury of his creditor; the government fails, at last, to bolster up what no legislation can sustain; speculators upon public measures and individual ignorance or necessity, swarm and rejoice in the corrupt atmosphere that legislation, knavish or foolish, or both, as the case may be, has created; we have that chaos come again, of the memorable era of "Continental money" and "State issues," which our ancestors have taxed their abilities to picture to us in hideous colors, to the end that we might be profited by the warnings of wisdom, confirmed by the experiences of the fiery furnace; and we shall prove deaf to its thunder-tones. Such is to be the finale of the wild scheme of those who have occasioned these articles, if we shall become the unhappy victims of their advice.

The tenderness which has so often been professed by legislative orators for debtors, as a class, has ever been suspicious to

my apprehension. I have been in the category of both debtor and creditor—sometimes unable to pay in the former character, and not paid in the latter. But, having long been in a situation to have an instructed judgment, I cannot call to my recollection a single case in which a creditor wilfully and deliberately persecuted an honest insolvent. Such cases there, no doubt, have been; within the sphere of my experience, they must have been exceptions only to the general rule. I must, therefore, think that the oratory (and the legislation it has produced), to which I refer, has been the voice rather of the demagogue than the statesman—of *agrarianism* than of wisdom. However that may be, the debtor does not need the benefit of that legislation which enables him to pay a *dollar* with *fifty cents* (in the shape of a promise to pay), by reason of a rapacious appetite to devour him on the part of his creditor, for the latter is restrained (in our State certainly, and I believe in all the rest) by "stop laws." Whether such enactments be constitutional or not, they have been acquiesced in; and, therefore, a congressional scheme to enable the debtor to convert a piece of paper into a dollar, and thus cheat his creditor, under the august authority of the legislative panoply, is not called for by the tenderest regard for even the pet class of animated orators—the dear lovers of the people. Under the stop laws, as they are actually received, the debtor, who has his own estate proper in enjoyment, as well as such as he has borrowed from his creditor, and can't be disturbed by the latter, as to either—who is lord of all he surveys—does not seem to need any further legislative barrier against Shylock himself. Besides, a debtor to-day may be a creditor to-morrow; and then let him remember "the poisoned chalice may be commended to his own lips."

CATO.

No. XII.

The currency of the Confederate government has utterly supplanted gold and silver. Practically, nothing else can be had as money. A creditor is obliged to take this or nothing. It is the only medium of exchange. Those who depend wholly

upon income for the necessaries of life—and they are legion —the most helpless part of the community—widows and orphans—those who live on salaries—those who, in the decline and feebleness of life, have invested all they have in stocks or private loans—are obliged to take and offer the Confederate currency. It is depreciated (no matter from what cause), and they have to pay, for everything they get, the enhanced price equivalent to the depreciation. Is not this enough of burden for those classes to bear, placed upon their backs by the debtor, who is driven to do so by the action of the government—under its necessities, be it granted? It would be, if the power existed, but a wanton spoliation of those classes of people to compel them to receive for the principal of their loans any currency but that they lent. It is not a time for reinvestments; commerce, external, does not exist; trade, internal, is circumscribed; credit is placed in the condition of extremest doubt and hazard by the casualties of gigantic war; banks are, in a measure, suffocated, because, by their patriotic acquiescence and active co-operation, the government at Richmond occupies by its currency, already in plethoric amount, the entire field that was formerly theirs; and that enterprise, which calls for and exercises the moneyed capital of the country, is paralyzed by that all-engulphing cause which summons to the defence of the country every energy in it. It would, therefore, be iniquitous, upon grounds of abstract right, and independent of constitutional barriers, to compel a creditor, who does not demand that currency which is his due, or any part of it, to take a currency not at all its equivalent; thus despoiling him of a part of his estate; especially, too, when (as has been shown) nobody but the debtor would derive any benefit, and that temporary; when the general public interests would not be advanced, and the specific design, to wit, that of placing the government currency at par value of specie, would, infallibly, be disappointed.

It is one thing to oppose an unconscientious, an ineffectual, an unjust and injurious, and an unconstitutional measure, aimed at the end of sustaining the Confederate notes upon a position they cannot occupy; and quite another thing to impeach the credit of the government by throwing distrust upon its bills of credit, either because an odious speculation is de-

signed, or there is a purpose to cut the sinews of war. Nobody can visit such conduct and such designs as the latter with more unqualified detestation than I do. It is the redundancy of the government issues, more than all other causes combined, that graduates the comparative value of them. The same causes would operate on gold and silver, under the same circumstances, though, I imagine, never in the same degree; for the metal has an intrinsic value; the paper none: the one *is* money; the other may or may not be its equivalent, but cannot be until a contingency, specified in the promise, shall arise in the future. Nevertheless, everybody knows that if the government fails to redeem its promises to pay, in the end, because it may be exploded, then we and all we have must also be exploded. He, therefore, is a silly enemy of the country and of himself, who seeks to undermine or to cripple the credit of the government.

To those who may think I have been beating the air—"turning up ocean's depths to drown a fly"—by discussing patiently matters that seem to them axiomatic, I have to say, that they see not the dangers that beset the Constitution. I have had opportunities to discover that consolidationists abound in this Confederacy — that they are, and not scantily either, represented in high places; that the scheme I have been discussing and controverting is but the incipiency, one evil omen, of a course of construction, exemplified by the Federalists of other days, and their followers ever since; all "sappers and miners" of the Constitution, though under a vast variety of party designations; the effect of which, if not the design, is to cut loose from our moorings, to evade the restraints of the Constitution, and substitute for it the will of a majority. We have, in the Judiciary act of Congress, that fatal twenty-fifth section of its predecessor of 1789, which draws to the footstool of the Supreme court every question of conflict between the delegated powers and the reserved rights; and this will prove the grave of the reserved rights of the States, if the bench of the Supreme court (now soon to be filled) be occupied by those who draw their inspirations from Marshall and Hamilton, instead of Jefferson and Roan—who look with veneration and deference to the proclamation of Jackson, rather than to the Virginia and Kentucky resolutions of 1798. And who can predict what sort

of material will be sought with which to construct that court? I confess I have my anxieties. Even while I write I find another omen in the following language of a Richmond newspaper, of September 17, to wit: "His (Mr. Yancey's) speech comes with refreshing effect after the appalling declaration of a member of the House, that, in a certain contingency, he would be willing to cast aside the Constitution, and, as a necessary consequence, to trample down the safeguards of public liberty, and of the States, and of the people." I am afraid the teachings of the not distant future may vindicate me from the imputation that I am over-zealous, over-suspicious, and over-anxious, in warning my countrymen to "*scan the evil omens—obsta principiis.*"

I close this discussion, on my part, by recapitulating the propositions I have endeavored to establish. They are as follows:

1. That under the power to "coin money, regulate the value thereof and of foreign coin," Congress has no power to declare their "bills of credit" a legal tender in payment of debts."

2. That Congress has no power to declare what shall be such a legal tender; that the Constitution declares what shall alone be such, since the prohibition upon the States, in that behalf, is a negative pregnant.

3. That Congress has no authority to issue paper money at all; *a fortiori*, none to declare it a legal tender in payment of debts.

4. That if Congress may issue such a currency, it cannot also make it a legal tender in payment of debts; for the one power is wholly distinct from the other, and they have no connection with each other.

5. That this has never been done under the Constitution of the United States, until the last Congress, which sat at Washington, and which sat under the restraints of no Constitution.

6. That Alexander Hamilton himself and his followers, under the *quondam* United States and their Constitution, never distinctly asserted the power of Congress to issue a paper currency; but that he earnestly advised against it as contravening the "*spirit*" of the Constitution and full of danger; and he and his followers never went farther than to make the bills of the

Bank of the United States and the Treasury notes receivable in dues to the Federal government.

7. That the exercise of the power in question, and the adoption of the policy recommended, in and out of Congress, would violate the first principles of the social compact; the soundest maxims of wise legislation; would perpetrate palpable injustice between man and man, by subverting the obligation of contracts; would, in sundry other respects, subvert also the foundation upon which our Constitution rests; and would fail, at last, to achieve the end in view.

8. That under all the views presented by the subject, to *infer* or *imply* a power so potent for evil, and certainly not specifically delegated, from the clause in respect to "necessary and proper" auxiliary *means* to specified *ends*, would substitute means for ends; would utterly emasculate the Constitution, and turn loose the government to depredate upon the rights of the States, and the rights and liberty of the citizen, with no restraint but the sword of revolution in perspective.

9. That there are omens enough, now plainly visible in and out of Congress, portending the advent of such a scene of chaos, lawlessness, and ruin; and that, therefore, this is the season, the urgent occasion, to act out the primary maxim, commended by all reason and experience to the constituency of a republican government, to wit: "*Eternal vigilance is the price of liberty.*"

CATO.